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BOOK REVIEWS.

EDWARD N. PERKINS, *Editor-in-Charge.*

THE HIGH COURT OF PARLIAMENT AND ITS SUPREMACY. By CHARLES HOWARD McLLWAIN. New Haven: YALE UNIVERSITY PRESS. 1910. pp. xxii, 409.

We have here a scholarly treatise on a topic with which the historical studies of Pollock, Maitland, and other recent writers have begun to familiarize the judicious reader. It is not the least of the fruits of the newer historical method of reading history backwards as well as forwards that it enables us to see past events and institutions in their own light rather than in that in which the prism of our contemporary impressions has invested them. Thus contemplated the English Parliament, which has come to embody the ideal of supreme legislative power in all progressive nations, presents itself as an institution with a past in which its present lineaments are scarcely discernible. It is no news that the Great Council of the Norman and Angevin Kings was the "original" of Parliament, nor that its functions were for a long time administrative and judicial rather than legislative, nor yet that its legislative authority was the latest of its powers to be effectively wielded and acknowledged. But nowhere have the facts been set forth with the fulness of detail and the persuasiveness that characterize Prof. McIlwain's work. The word "persuasiveness" is used advisedly, for our author expresses himself on more than one controverted question, on which, as he expresses it, he has not been able to follow "the masters of English historical jurisprudence."

His argument is, briefly, this: that for centuries the common law, conceived, as in all early societies, as a static, not to say a revealed or divinely ordained system, was regarded as a fundamental law beyond the reach of alteration whether by the courts or by the king in council; that the law-making, as distinguished from the law-declaring function, is a comparatively late invention of the Anglo-Saxon polity; that the High Court of Parliament was primarily a court of justice, differing in no essential respect from the other tribunals by which the ordinary justice of the realm was administered, excepting in the fact that it was, as Sir Thomas Smith expresses it, "the highest and most absolute" court in the kingdom; that what we should call its legislative power was for long exercised only in the restating or codifying of fundamental principles of the common law, in condemning bad practices and obnoxious customs which had been suffered to grow up, and in restoring its pristine virtue; that neither in the ordinary courts nor in the High Court of Parliament was there any conscious distinction between acts of judgment and of legislation, but that in form and in theory they were one and the same; that the power of Parliament to legislate in derogation of the common law was long disputed and the validity of such legislation constantly questioned; and, finally, that it was not until the Restoration that Parliament can be said to have definitely grasped the reins of legislative power and so put its sovereignty beyond dispute. This bare outline, which offers little occasion for controversy, does scant justice to the richness of the work in allusion, in political philosophy, and in the discussion of innumerable collateral matters of interest. It is in these last that the learned author enters occasionally on debatable ground, as in his discussion

of the nature of parliamentary sovereignty (perhaps the least convincing part of the book), and in his handling of Coke and the precedents on the question of the validity of acts of Parliament derogating from the common law, where he comes into conflict with such redoubtable antagonists as Sir Frederick Pollock (pp. 271-276, 287) and Professor Roscoe Pound (pp. 281, 291).¹ Into these controverted matters we cannot enter here, though we may say that our author bears himself in a lawyer-like way and makes out the strongest case for his position that has yet been presented.

From a book which gives so much it may be too exacting to demand more, but it is a disappointment to the lawyer not to find in it a connected account of the judicial functions exercised by parliament during the long period from the Revolution down to our own time. It appears, indeed, that the differentiation of functions, the "separation of powers," of the High Court of Parliament and the superior courts of judicature has gone so far as to leave the latter shorn completely of their ancient political powers. Has the judicial function of the "highest and most absolute" court in the kingdom also become atrophied? If so, when and by what process? Crowded out, no doubt, by the increasing pressure of legislative and administrative business devolving upon it through its assumption of the entire political administration. Even in the "spacious times of the great Elizabeth" its exercise of the judicial function had become infrequent, if we may trust Sir Thomas Smith. For he records that in "the matter of giving judgment" in private causes, "such bills be seldom received, because that great counsell, being enough occupied with the publique affaires of the realme, will not gladly intermeddle it selfe with private quarels and questions." (Lib. II, cap. 6.)

But our author has forestalled this criticism, if criticism it be, by his modest disclaimer of any attempt to present a complete account of parliamentary history. The work is an essay, in the old-fashioned sense of the term, not a treatise, and its object is only to trace "the history of certain legal ideas" relating to "the boundaries between legislation and adjudication in England." As such it is a suggestive and stimulating as well as a competent performance.

G. W. K.

CRIME: ITS CAUSES AND REMEDIES. By CESARE LOMBROSO, M. D., Professor of Psychiatry and Criminal Anthropology in the University of Turin. Translated by HENRY P. HORTON, M. A. With an introduction by MAURICE PARMELEE, PH. D., Assistant Professor of Sociology in the University of Missouri. Modern Criminal Science Series, No. 3. Boston: LITTLE, BROWN & Co. 1911. pp. xlvii, 451.

This is the third volume of the Modern Criminal Science Series published under the auspices of The American Institute of Criminal Law and Criminology. In the general introduction, it is stated that "the Institute takes upon itself, as one of its aims, to inculcate the study of modern criminal science, as a pressing duty for the legal profession and for the thoughtful community at large. One of its principal modes of stimulating and aiding this study is to make available in the English language the most useful treatises now extant in the Continental languages. * * * The effort, in selecting this series

¹See also Prof. Frank J. Goodnow, *Social Reform and the Constitution*, 335.